



June 28, 2000

Mr. Thomas Ricks  
The University of Texas  
Investment Management Company  
210 West Sixth Street, 2<sup>nd</sup> Floor  
Austin, Texas 78701

OR2000-2464

Dear Mr. Ricks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136553.

The University of Texas Investment Management Company ("UTIMCO") received a request for "a copy of Patrick Thompson's memo or memos (and any related info—regardless of where held) following up on Greytock's [sic] whitewashgate/specific refusals to investigate/paper tiger sham show." The responsive information consists of one memorandum. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.107(1) excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.*

You explain that the submitted memorandum is addressed to the UTIMCO Board of Directors from an attorney who provides legal services to UTIMCO. We find that portions of the memorandum contain privileged information that is excepted under section 552.107. We have marked the information that UTIMCO may withhold under section 552.107. UTIMCO must release the remainder of the memorandum to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

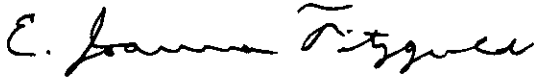
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Joanna Fitzgerald". The signature is fluid and cursive, with the first name "E." and last name "Fitzgerald" clearly distinguishable.

E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 136553

Encl: Submitted documents

cc: Mr. Stephen Lisson  
Initiate!!  
P.O. Box 2013  
Austin, TX 78768  
(w/o enclosures)